IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

JEREMY J. WONCH,	Case No.
Plaintiff,	

 \mathbf{v}_{ullet}

DEREK K. MEYER, Individually, NAVAJO EXPRESS, INC., a Colorado Corporation,

Defendants.		

COMPLAINT

COMES NOW the Plaintiff, JEREMY J. WONCH, by and through his attorneys of record, DEMERATH LAW OFFICE, and O'HANLON, MCCOLLOM & DEMERATH complaining of the Defendants, DEREK K. MEYER, Individually, who is thought to reside at 334 West Troy, Kuna, ID 83634, and NAVAJO EXPRESS, INC., a Colorado corporation doing business all over the United States with its main office located at 1400 West 64th Avenue, Denver, CO 80221, and each of them, and states as follows:

- On April 24, 2012, and all times relevant herein, the Plaintiff, JEREMY J.
 WONCH was a citizen and resident of the State of Nebraska.
- 2. On April 24, 2012, and all times relevant herein, it is believed that the Defendant, DEREK K. MEYER was a citizen and resident of the State of Idaho.
- 3. On April 24, 2012, and currently, the Defendant, NAVAJO EXPRESS, INC., was and is a corporation doing business all over the United States and was and is

believed to be a corporation organized and existing under the laws of the State of Colorado. Said Defendant is believed to have been doing business herein out of its terminal located at 1356 East Beechcraft Court, Boise, ID 83716 (See Motor Vehicle Accident Report attached hereto and made a part hereof).

- 4. On April 24, 2012, at or about the hour of 18:35, JEREMY J. WONCH was traveling westbound in his 2008 Ford, F1S, on I-80 near mile post 137 in Keith County, Nebraska.
- 5. On April 24, 2012, at or about the hour of 18:35, Defendant DEREK K. MEYER was operating, managing, maintaining, and controlling a 2012 Kenworth Conventional tractor and semi-trailer westbound on I-80 near mile post 137 in Keith County, Nebraska.
- 6. On April 24, 2012, and at all times mentioned herein the Defendants NAVAJO EXPRESS, INC., by and through its duly authorized agent and/or employee and/or representative DEREK K. MEYER owned, operated, managed, maintained, cared for, inspected, and/or controlled the 2012 Kenworth Conventional tractor and semi-trailer westbound on I-80 near mile post 137 in Keith County, Nebraska.
- 7. On April 24, 2012, and at all times mentioned herein the Defendant DEREK K. MEYER while operating and controlling the aforementioned tractor and trailer as the agent, employee, and/or representative of the Defendant NAVAJO EXPRESS, INC., was acting within the course and scope of that employment and/or agency.

- 8. At the time of the accident, due to poor maintenance and/or inspection and/or care and/or negligent operational control, of the subject tractor and trailer by DEREK K. MEYER it violently struck the rear of JEREMY J. WONCH's vehicle.
- 9. The impact of the vehicle driven by DEREK K. MEYER in striking the rear of JEREMY J. WONCH's vehicle caused extremely serious personal injuries to JEREMY J. WONCH.
- 10. On April 24, 2012, and at all times mentioned herein, at least Defendants DEREK K. MEYER and NAVAJO EXPRESS, INC., and each of them were jointly and/or severely liable for injuries and damages caused to JEREMY J. WONCH by Defendant DEREK K. MEYER.
- 11. Defendant NAVAJO EXPRESS, INC., had policies and/or procedures in place of promoting, encouraging, and/or requiring the continued operation of its vehicles regardless of the unit's mechanical condition, surrounding circumstances, and/or the physical condition of the driver.
- 12. At all times referenced herein, the Defendant NAVAJO EXPRESS, INC., by and through its duly appointed agent, employee, servant, and/or representative, DEREK K. MEYER had a duty to those traveling on I-80, including the Plaintiff, to exercise reasonable care and control with respect to the operation, maintenance, inspection, and/or management of the aforesaid tractor and trailer.
- 13. At the aforementioned time and place, the Defendant NAVAJO EXPRESS, INC., by and through its duly authorized agent, employee, servant, and/or representative, Defendant DEREK K. MEYER was then and there guilty of one or more of the following negligent acts, gross negligent acts, malicious acts, evil acts, and/or

known willful omissions, and all committed with evil intent, and/or with reckless and wanton disregard of fellow travelers' rights on the subject roadway:

- (a) Defendant DEREK K. MEYER was less than honest and forthcoming in his application for employment and/or Defendant NAVAJO EXPRESS, INC., failed to properly perform a background check on Defendant DEREK K. MEYER and/or hired people who were improperly trained and/or unqualified to operate over the road vehicles like the one involved herein;
- (b) Defendant DEREK K. MEYER was improperly trained and/or failed to meet the minimum requirements of driving an over the road vehicle, which is the subject of this action;
- (c) Defendant DEREK K. MEYER violated alcohol consumption rules and/or laws:
- (d) Failed to properly maintain the tractor and trailer in question, including but not limited to, brakes, tires, and wheels on said vehicle;
- (e) Failed to properly inspect the tractor and trailer in question, including but not limited to, brakes, tires, and wheels on said vehicle;
- (f) Failed to properly manage the tractor and trailer in question, including but not limited to, brakes, tires, and wheels on said vehicle;
- (g) Failed to properly control the tractor and trailer in question, including but not limited to, brakes, tires, and wheels on said vehicle;
- (h) Failed to exercise due care in the operation, lookout, and control of the aforesaid tractor and trailer in question;

- Operated a motor vehicle with a reckless and wanton disregard for the safety of fellow travelers on the roadway in question, including JEREMY
 J. WONCH;
- (j) Negligently failed to take reasonable action to avoid the collision with the vehicle driven by JEREMY J. WONCH; and,
- (k) Were otherwise generally malicious, actually, knowingly, intentionally, willfully, recklessly, careless, and/or negligent.
- 14. In addition to the negligence set forth herein, the Defendants were negligent *per se* in failing to knowingly comply with the Federal Motor Carrier Safety Act, and any other applicable federal or state law or regulation concerning the proper maintenance, inspection, management, operation, and control all vehicle equipment.
- 15. Each of the aforementioned negligent acts, gross negligent acts, malicious acts, evil acts and/or known willful omissions of the Defendants constituted the proximate cause of the collision between the Defendants' subject tractor and trailer and the vehicle driven by JEREMY J. WONCH, and of the resulting injuries and damages to Plaintiff.
- 16. The negligent acts, gross negligent acts, malicious acts, evil acts and/or known willful omissions listed herein occurred while Defendant DEREK K. MEYER was an agent for and/or in the course and scope of his employment for Defendant NAVAJO EXPRESS, INC. Thus, the doctrines of Agency and/or Respondent Superior are applicable in this case thereby imputing any negligence of Defendant DEREK K. MEYER to Defendant NAVAJO EXPRESS, INC.

17. As a direct and proximate result of the negligence of the Defendants

herein, JEREMY J. WONCH sustained injuries and damages, including unnecessary

painful physical discomfort, mental agony, and disability.

18. JEREMY J. WONCH incurred medical and hospital expenses as a

proximate result of the negligence of each of the Defendants.

19. JEREMY J. WONCH incurred mileage expenses and loss of time at work

as a proximate result of the negligence of each of the Defendants.

20. The damages suffered by Plaintiff and sought to be recovered by this suit

are more likely than not to exceed the amount of damages required for diversity

jurisdiction.

WHEREFORE, Plaintiff requests judgment against each of the Defendants for

general and special damages in an amount that will fairly and adequately compensate him

for bodily injury and resulting pain and suffering, disability, mental anguish, and/or loss

of consortium – along with interest thereon, together with his costs and such other relief

as may be allowed by the laws of Nebraska.

JURY TRIAL DEMANDED.

DATE this 3rd day of June, 2014.

JEREMY J. WONCH, Plaintiff.

Larry R. Demerath, #10978

DEMERATH LAW FIRM

12829 West Dodge Road, Suite 201

Omaha, Nebraska 68154-2188

PH: (402) 677-5656

and

Justin B. Demerath, #24244 of:

O'HANLON, MCCOLLOM, & DEMERTH

808 West Avenue Austin, Texas 78701 PH: (512) 494-9919

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Trp. Martens		Digital Certificate with Nebrasi	a Crime Commissio	REPORT 04/25/2012			

State of Nebraska

212014427

Investigator's Supplemental Truck and Bus Accident Report
This form must be completed in addition to the DR Form 40, "Investigator's Motor Vehicle
Accident Report," if any of the vehicles involved meet the criteria listed on the back of this form.

LOCAL NO.: DISTRICT		DATE OF ACCIDE	NT COUNTY		CHY	STATE USE ONLY		
04-24-2012 Keith								
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Derek K Meyer			-	IDENTIFICAT	TION 270970			
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Navajo Express In	IC			WEIGHT RATH	WEIGHT RATING (GCVWR)			
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Sheet _2__ of _2_

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